

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

SEAN CARLOS BURKE ,)
)
Plaintiff ,)
)
v .) C.A. 05-972
)
) Judge Hardiman
CAPTAIN ANTHONY BOYD et al ,) Magistrate Judge Caiazza
)
Defendants .)

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

I. RECOMMENDATION

It is respectfully recommended that the Plaintiff's application for leave to proceed in forma pauperis be denied and that this action be dismissed, without prejudice.

II. REPORT

The Plaintiff, Sean Carlos Burke ("Burke"), an inmate confined under judgment of sentence at the Beaver County Jail, Beaver, Pennsylvania, filed this lawsuit under the Civil Rights Act of 1871, 42 U.S.C. § 1983, against a series of Defendants. With the Complaint, the Plaintiff filed an application for leave to proceed in forma pauperis.

The Prison Litigation Reform Act of 1996, 28 U.S.C. §1915(b) as amended April 26, 1996, requires that prisoners who cannot pay the full filing fee immediately, submit an initial partial filing fee and the balance in installment payments. Consistent with that Act, the court entered an Order on July 25, 2005, which directed

the Plaintiff to submit by August 9, 2005, a certified copy of his institutional account statement from every jail or prison in which he was confined, showing the status of that account or accounts, from February 1, 2005 through the date that the account statement is submitted. See Doc. 7.

As of this date Burke has not submitted a six month institutional account statement. Because the court will not direct the prison to withdraw money from the Plaintiff's institutional account and pay it into the court until Burke authorizes a withdrawal, the initial partial filing fee in this case will never be paid.

Burke's refusal to comply with the directions which appear in the court's July 25, 2005, order makes it impossible for the court to comply with Congress' amendments to the law regulating the manner in which in forma pauperis prison litigation is to be administered. Because the Plaintiff has not complied with the previous order, the court must conclude that Burke no longer desires to maintain this action.

It is respectfully recommended that the Plaintiff's application to proceed in forma pauperis be denied and that this action be dismissed, without prejudice.

In accordance with the Magistrate's Act, 28 U.S.C. § 636 (b)(1)(B) and (C), and Rule 72.1.4 (B) of the Local Rules for Magistrates, objections to this Report and Recommendation are due by August 29, 2005.

August 19, 2005

s/Francis X. Caiazza

Francis X. Caiazza
U.S. Magistrate Judge

cc:

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